

SENATE BILL 167

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2004 Regular Session
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By: **Senators Pinsky, Astle, Brochin, Conway, Dyson, Exum, Forehand,
Frosh, Gladden, Green, Grosfeld, Hollinger, Hooper, Hughes, Jones,
Kelley, Klausmeier, McFadden, Miller, Ruben, Stone, and Teitelbaum**

Introduced and read first time: January 23, 2004
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 30, 2004

CHAPTER _____

1 AN ACT concerning

2 **Prescription Drugs - Canadian Mail Order Plan**

3 FOR the purpose of requiring the Department of Health and Mental Hygiene, on or
4 before a certain date, to seek approval of a certain waiver from the federal Food
5 and Drug Administration to operate a program to purchase and import
6 prescription drugs from Canada and to certify the safety and efficacy of the
7 imported prescription drugs; requiring the Department, on or before a certain
8 date, to seek approval from the Centers for Medicare and Medicaid Services to
9 allow the State to use certain funds to operate a certain program; requiring, ~~on~~
10 ~~or before a certain date, the Secretary of Health and Mental Hygiene, in~~
11 ~~coordination with the Secretary of Budget and Management, the Department,~~
12 ~~on or before a certain date, to develop a plan to implement a Canadian Mail~~
13 Order Plan for the purchase and importation of prescription drugs; requiring the
14 Canadian Mail Order Plan to provide prescription drugs to certain ~~participants~~
15 ~~individuals; authorizing the Secretary of Health and Mental Hygiene to include~~
16 ~~enrollees and recipients of other State prescription drug programs in the~~
17 Canadian Mail Order Plan; requiring the Secretary of Health and Mental
18 Hygiene to contract with a pharmacy benefits manager to operate the Canadian
19 Mail Order Plan, under the Secretary's direction; requiring the pharmacy
20 benefits manager to incorporate certain patient safety features in the Canadian
21 Mail Order Plan; specifying certain cost requirements for a prescription drug
22 provided through the Canadian Mail Order Plan; requiring the Secretary ~~of~~
23 ~~Health and Mental Hygiene~~ to provide certain financial incentives to
24 participants to purchase prescription drugs through the Canadian Mail Order
25 Plan; requiring the Department to submit a certain annual report to the
26 Governor and the General Assembly; requiring the Department to implement a

1 certain plan within a certain number of days after the approval of certain
2 requests; providing for the termination of this Act contingent on certain
3 circumstances; and generally relating to ~~provision of prescription drugs through~~
4 a Canadian Mail Order Plan for the purchase and importation of prescription
5 drugs from Canada.

6 ~~BY adding to~~
7 ~~Article Health General~~
8 ~~Section 15-141~~
9 ~~Annotated Code of Maryland~~
10 ~~(2000 Replacement Volume and 2003 Supplement)~~

11 Preamble

12 WHEREAS, Like many states, Maryland has experienced double-digit growth
13 in pharmacy costs in recent years, averaging 18 percent per year over the past three
14 years; and

15 WHEREAS, Growth in prescription drug costs has resulted from escalating
16 enrollment in State assistance programs, increased drug utilization per beneficiary,
17 rising drug costs, and new high-cost drugs replacing less costly drugs; and

18 WHEREAS, The State has used various mechanisms, such as tiered
19 co-payments and restricted formularies, to rein in rising prescription drug costs; and

20 WHEREAS, Canadian pharmaceutical pricing, distribution practices, and
21 favorable exchange rates can make medications needed by Maryland State
22 employees, Maryland Medical Assistance recipients, and Maryland Pharmacy
23 Assistance recipients available at far less cost to the State than current policy and
24 practice allows;

25 WHEREAS, Other states and localities, including Illinois, Iowa, Minnesota, and
26 Springfield, Massachusetts, are promoting access to Canadian pharmacies for their
27 citizens; and

28 WHEREAS, The pharmaceutical manufacturing, storage, distribution, and
29 dispensing requirements under Canadian law are substantially equivalent to United
30 States federal requirements; now, therefore,

31 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
32 MARYLAND, That, on or before November 1, 2004, the Department of Health and
33 Mental Hygiene, in consultation with the Attorney General's Office, shall seek
34 approval of a waiver from the federal Food and Drug Administration that would allow
35 the State to operate a program to purchase and import prescription drugs from
36 Canada and certify the safety and efficacy of any prescription drugs imported from
37 Canada.

38 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before November 1,
39 2004, the Department of Health and Mental Hygiene shall seek approval from the

1 Centers for Medicare and Medicaid Services to allow the State to use matching funds
2 to operate a program that purchases and imports prescription drugs from Canada on
3 the approval of the waiver from the federal Food and Drug Administration sought by
4 the Department under Section 1 of this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That:

6 (a) On or before January 1, 2005, the Department of Health and Mental
7 Hygiene shall develop a plan to implement a Canadian Mail Order Plan for the
8 purchase and importation of prescription drugs in accordance with subsection (b) of
9 this section.

10 (b) (1) The Canadian Mail Order Plan shall provide prescription drugs, as
11 specified in this subsection, to the following individuals:

12 (i) State Employee and Retiree Health and Welfare Benefits
13 Program enrollees;

14 (ii) Maryland Medical Assistance Program recipients;

15 (iii) Maryland Pharmacy Assistance Program recipients;

16 (iv) enrollees and recipients of any other State prescription drug
17 program as the Secretary of Health and Mental Hygiene deems appropriate; and

18 (v) any individual in the State without health insurance or
19 prescription drug coverage.

20 (2) The Secretary of Health and Mental Hygiene shall contract with a
21 pharmacy benefits manager to operate the Canadian Mail Order Plan, under the
22 direction of the Secretary.

23 (3) The pharmacy benefits manager shall incorporate patient safety
24 features in the Canadian Mail Order Plan, including:

25 (i) requiring a participant, prior to filling a drug prescription
26 through the Canadian Mail Order Plan, to:

27 1. use and tolerate the prescription drug for a minimum of 1
28 month through retail purchase; and

29 2. submit to the pharmacy benefits manager a brief medical
30 history, including allergies, medication history, and diagnoses;

31 (ii) developing a restricted list of prescription drugs appropriate for
32 purchase through mail order;

33 (iii) using only licensed pharmacists to dispense prescription drugs;
34 and

1 (iv) requiring prescription drugs to be provided through "unit of
2 use" packaging, sealed and shipped directly from the manufacturer to the pharmacy
3 and then to the participant, in order to reduce medication errors and the possibility of
4 counterfeit drugs.

5 (4) The cost to both the State and the participant for a prescription drug
6 provided through the Canadian Mail Order Plan shall be less than the cost to both the
7 State and the participant through retail purchase.

8 (5) The Secretary of Health and Mental Hygiene shall provide a
9 financial incentive, such as the elimination or reduction of the co-payment, to
10 participants to purchase prescription drugs through the Canadian Mail Order Plan.

11 (6) On or before January 1 of each year, the Department of Health and
12 Mental Hygiene shall submit a report for the prior fiscal year to the Governor and, in
13 accordance with § 2-1246 of the State Government Article, to the General Assembly:

14 (i) comparing the approximate costs to the State of purchasing and
15 importing prescription drugs from Canada under the Canadian Mail Order Plan and
16 the approximate costs to the State of purchasing prescription drugs in the United
17 States; and

18 (ii) specifying the savings, if any, realized as a result of
19 participation in the Canadian Mail Order Plan.

20 SECTION 4. AND BE IT FURTHER ENACTED, That:

21 (a) The Department of Health and Mental Hygiene shall implement the
22 Canadian Mail Order Plan in accordance with the implementation plan required
23 under Section 3 of this Act within 30 days after the later to occur of the following:

24 (1) approval by the federal Food and Drug Administration of the waiver
25 applied for under Section 1 of this Act; and

26 (2) approval by the Centers for Medicare and Medicaid Services of the
27 request applied for under Section 2 of this Act.

28 (b) If the waiver or the request specified in subsection (a) of this section is
29 denied, this Act shall be null and void without the necessity of any further action by
30 the General Assembly.

31 (c) The Department of Health and Mental Hygiene, within 5 days after
32 receiving notice of approval or denial of a waiver or request specified in subsection (a)
33 of this section, shall forward a copy of the notice to the Department of Legislative
34 Services, 90 State Circle, Annapolis, Maryland 21401.

35 SECTION 1. ~~BE IT ENACTED BY THE GENERAL ASSEMBLY OF~~
36 ~~MARYLAND, That the Laws of Maryland read as follows:~~

~~Article Health General~~

15-141.

(A) ~~ON OR BEFORE JULY 1, 2005, THE SECRETARY, IN COORDINATION WITH THE SECRETARY OF BUDGET AND MANAGEMENT, SHALL IMPLEMENT A CANADIAN MAIL ORDER PLAN FOR PRESCRIPTION DRUGS.~~

(B) ~~THE CANADIAN MAIL ORDER PLAN SHALL PROVIDE PRESCRIPTION DRUGS, AS SPECIFIED IN THIS SECTION, TO THE FOLLOWING PARTICIPANTS:~~

(1) ~~STATE EMPLOYEE AND RETIREE HEALTH AND WELFARE BENEFITS PROGRAM ENROLLEES;~~

(2) ~~MARYLAND MEDICAL ASSISTANCE PROGRAM RECIPIENTS;~~

(3) ~~MARYLAND PHARMACY ASSISTANCE PROGRAM RECIPIENTS; AND~~

(4) ~~ENROLLEES AND RECIPIENTS OF ANY OTHER STATE PRESCRIPTION DRUG PROGRAM AS THE SECRETARY DEEMS APPROPRIATE.~~

(C) ~~THE SECRETARY SHALL CONTRACT WITH A PHARMACY BENEFITS MANAGER TO OPERATE THE CANADIAN MAIL ORDER PLAN, UNDER THE DIRECTION OF THE SECRETARY.~~

(D) ~~THE PHARMACY BENEFITS MANAGER SHALL INCORPORATE PATIENT SAFETY FEATURES IN THE CANADIAN MAIL ORDER PLAN, INCLUDING:~~

(1) ~~REQUIRING A PARTICIPANT, PRIOR TO FILLING A DRUG PRESCRIPTION THROUGH THE CANADIAN MAIL ORDER PLAN, TO:~~

(I) ~~HAVE TOLERATED THE PRESCRIPTION DRUG FOR A MINIMUM OF 1 MONTH THROUGH RETAIL PURCHASE; AND~~

(II) ~~SUBMIT TO THE PHARMACY BENEFITS MANAGER A BRIEF MEDICAL HISTORY, INCLUDING ALLERGIES, MEDICATION HISTORY, AND DIAGNOSES;~~

(2) ~~DEVELOPING A RESTRICTED LIST OF PRESCRIPTION DRUGS APPROPRIATE FOR MAIL ORDER;~~

(3) ~~USING ONLY LICENSED PHARMACISTS TO DISPENSE PRESCRIPTION DRUGS; AND~~

(4) ~~REQUIRING PRESCRIPTION DRUGS TO BE PROVIDED THROUGH "UNIT OF USE" PACKAGING SEALED AND SHIPPED DIRECTLY FROM THE MANUFACTURER TO THE PHARMACY AND THEN TO THE PARTICIPANT, IN ORDER TO REDUCE MEDICATION ERRORS AND THE POSSIBILITY OF COUNTERFEIT DRUGS.~~

(E) ~~THE COST TO BOTH THE STATE AND THE PARTICIPANT FOR A PRESCRIPTION DRUG PROVIDED THROUGH THE CANADIAN MAIL ORDER PLAN SHALL~~

1 ~~BE LESS THAN THE COST TO BOTH THE STATE AND THE PARTICIPANT THROUGH~~
2 ~~RETAIL PURCHASE.~~

3 (F) ~~THE SECRETARY SHALL PROVIDE A FINANCIAL INCENTIVE, SUCH AS THE~~
4 ~~ELIMINATION OR REDUCTION OF THE CO-PAYMENT, TO PARTICIPANTS TO~~
5 ~~PURCHASE PRESCRIPTION DRUGS THROUGH THE CANADIAN MAIL ORDER PLAN.~~

6 SECTION ~~2~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take
7 effect ~~October~~ July 1, 2004.